* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Crl. M.C. No. 115-16/2006**

% Date of Decision: 26th November, 2007

\# **Sunil Gupta & Anr.** .....Petitioners

! Through Mr. Rahul Gupta with Mr. Dhiraj Kumar, Advocate along with petitioners in person.

Versus

$ **State of NCT of Delhi & Ors.** .....Respondents

^ Through Mr. Pawan Bahl, APP for State

Mr. Vijay Kumar Sondhi with Mr. Kapil Arora, Advocates for R-2, Complainant present in person.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

This joint petition has been filed by the petitioners, out of whom petitioner no. 1 is the accused and petitioner no. 2 is the complainant, under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' in short) for quashing FIR no. 679/2005 for the offences under Sections 467/471/468/420/408/34 IPC registered at police station New Friends Colony on 31.12.2005 against petitioner no. 1 and respondent no. 2 Sunil Kumar at the instance of the complainant M/s K & A Securities Pvt. Ltd.

2. Facts leading to the registration of the FIR against petitioner no. 1 and respondent no. 2 and filing of this petition are that a complaint was filed by the complainant M/s. K & A Securities Private Limited, which was dealing with shares, against respondent no. 2, who was an employee of the complainant Company, and the petitioner no. 1 herein, who was running a proprietorship concern under the name of M/s. S.G. Consultants alleging that both Sunil Kumar and the petitioner no. 1 had committed cheating and defrauded the complainant Company to the tune of Rs. 23,39,700/-.

3. During the investigation the complainant and the accused resolved their

dispute and arrived at an amicable settlement. A Memorandum of Understanding dated 06.01.2006, copy of which has been placed on record as Annexure 3, was executed between the complainant and petitioner no. 1-accused. In view of that compromise this petition has been filed for quashing of the FIR in question. Learned counsel for petitioners submitted that since compromise has been arrived at between the parties no useful purpose would be served if the investigation in respect of the FIR is allowed to continue. In support of the prayer for quashing of the FIR he placed reliance upon three judgments of the Apex Court in "***Nalini Shankaran & Ors. v. Neelkanth Mahadeo Kamble & Ors." 2007 (2) Crimes 329 (SC), "B.S.Joshi & Ors. Vs. State of Haryana & Anr.", AIR 2003 SC 1386*** and "***Central bureau of Investigation v. Dunikons Agro Industries Ltd." 1996 (V) SCC 591*** and three judgments of this Court in "***Rishi Raj & Ors. v. The State" 2001 (2) JCC 234*** , "***Ajay Kumar & Ors. v. State & Ors." 131(2006)DLT 130*** and "***Ramesh Kumar v. State" 106(2003) DLT 534.***

4. Notice of this joint petition was given to the State as well as the other accused, respondent no.2 herein who also entered appearance. Though accused Sunil Kumar had not filed a petition for quashing of the FIR it was submitted by the counsel for the complainant that since the money has been received by the complainant, it is no more interested in pursuing the FIR even qua him and the FIR can be quashed against both the accused.

5. Learned APP for the State, however, opposed quashing of the FIR on the ground that allegations against the petitioner no. 1 and co-accused, respondent no. 2, are grave in nature and the offences which are being investigated are not compoundable under Section 320 Cr.P.C. and so if these offences are permitted to be compounded that would amount to bye-passing the provisions of section 320 Cr.P.C. which should not be done by this Court by exercising the inherent jurisdiction vested in it under Section 482 Cr.P.C. In support of this submission one judgment of the Hon'ble Supreme Court reported as ***2003 SCC (Crl.) 1238, "Inspector of Police, CBI v. B. Raja Gopal & Ors."*** was also cited by the learned APP.

6. I have considered the rival submissions. It is now well settled by many judgments of the Hon'ble Supreme Court that FIRs even in respect of those offences which are not compoundable under section 320 Cr.P.C. can be quashed as also the criminal proceedings emanating therefrom if it is felt by the Court while dealing with a quashing petition under section 482 Cr.P.C. that it would secure the ends of justice if the FIR and criminal proceedings arising therefrom are quashed and continuation of the investigation/criminal proceedings would amount to abuse of the process of law. The judgment in ***B.S. Joshi's case*** (supra), relied upon by the learned counsel for the petitioners is one of such judgments wherein it

has been so held by the Hon'ble Supreme Court. Similarly in the case ***(2007 (2) Crimes 329)*** relied upon by the counsel for the petitioners criminal case pending in the Court for the offences punishable under Sections 418/409/166 I.P.C. was quashed because of the settlement between the complainant Trust and the accused persons despite the fact that offence under Section 409 I.P.C. attracts sentence of even life imprisonment. Even in the judgments of this Court, cited by the counsel for the petitioners, FIRs for the offences of cheating, forgery etc. were quashed in view of the settlement between the complainants and the accused persons. In fact, in another case decided by a learned Single Judge of this Court, which is reported as ***2006 (2) JCC 1127 "Sanjay Goel & Ors. v. The State"*** FIR and the criminal proceedings emanating therefrom even in respect of an offence punishable under Section 467 I.P.C., for which offence also even life imprisonment can be awarded, were quashed since the complainant and the accused had amicably compromised the matter. So, just because in the present case offences of forgery were invoked at the time of registration of FIR the prayer of the complainant and the accused for quashing of the FIR cannot be declined for that reason, as was the submission of the learned APP. The judgment of Hon'ble Supreme Court cited by him does not say that whenever offences of forgery are reported to the police FIR can never be quashed. In ***Ajay Kumar's case*** (supra) a learned Single Judge of this Court had taken notice of this judgment of Hon'ble Supreme Court and in view of the settlement between the parties quashed the FIR

of that case in which also offences of forgery were invoked against the accused by observing that it was not a case of public transaction (as was the case in the decision cited by the APP). Therefore, in the present case also the FIR deserves to be quashed because of the settlement between the complainant and the accused as that would secure the ends of justice and continuation of the investigation against the accused would amount to abuse of process of law and also because no public money was involved in the transaction between the parties.

7. In view of the foregoing, I allow this petition and consequently FIR no. 679/2005 for the offences under Sections 467/468/471/420/408/34 I.P.C. registered at New Friends Colony Police Station on 31.12.2005 stands quashed in respect of both the accused persons.

P.K.BHASIN, J

November 26, 2007
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